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## Portland, Town of and Town of Portland Unit 6321, Civil Service Employees Association, Inc. Local 1000, AFSCME, AFL-CIO, Chautauqua County Local 807

Samuel Cugalj

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## **Portland, Town of and Town of Portland Unit 6321, Civil Service Employees Association, Inc. Local 1000, AFSCME, AFL-CIO, Chautauqua County Local 807**

### **Abstract**

In the matter of the fact-finding between the Town of Portland, employer, and Civil Service Employees Association, Inc. Local 1000, AFSCME, AFL-CIO, Chautauqua County Local 807, Town of Portland Unit 6321, union. PERB case no. M2009-228. Before: Samuel Cugalj, fact finder.

### **Keywords**

New York State, PERB, fact finding

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
PERB CASE #: M 2009-228  
FACT FINDER: SAMUEL CUGALJ

\* \* \* \* \*

In The Matter of Fact-Finding

- between -

TOWN OF PORTLAND

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.  
LOCAL 1000, AFSCME, AFL-CIO  
CHAUTAUQUA COUNTY LOCAL 807  
TOWN OF PORTLAND UNIT 6321

\* \* \* \* \*

F A C T -

F I N D I N G

R E P O R T

REPRESENTATION

For the Union

Penny Gleason, CSEA Labor Relations Specialist  
Timothy Munson, Local President, MEO  
Lora Vahue, Local Secretary  
Kathy Cave

For the Employer

Charles Loveland, Esq., Spokesperson  
Daniel Schrantz, Town Supervisor  
Rick Manzella, Councilman  
Gary L. Miller, Councilman

## **BACKGROUND**

The Civil Service Employees Association (hereafter "Union") represents seven (7) members employed by the Town of Portland ("Employer"), which is located in Chautauqua County, State of New York. The Union represents job titles of Motor Equipment Operator ("MEO") and Clerk to Justice ("CJ").

The Union's relationship with the District is governed by a 3 year Collective Bargaining Agreement that expired on December 31, 2009. Negotiations for a successor agreement began on September 28, 2009 with at least six (6) negotiation meetings held between the parties, and two (2) have reportedly been mediated sessions. Impasse was declared on November 3, 2009 when the New York State Public Employment Relations Board (hereafter "PERB") was petitioned for mediation services. A mediator was unable to resolve all issues. On August 26, 2010, PERB appointed this Fact Finder to hear and resolve outstanding issues.

A Fact-Finding Hearing was held on October 25, 2010 in the Town of Portland Municipal Building and while it did begin, the parties were bogged down by the use of a recording device by the Employer that the Union did not want used. The Fact Finder attempted to mediate a tentative bypass on the use of the device but was unable to obtain agreement from the parties. In order to move the process along, it was proposed that the parties mail in their Hearing Briefs to the Fact Finder and that would suffice in place of the actual Hearing. Both parties agreed to the mail-in bypass suggestion and agreed to the postmark deadline of December 15, 2010. The Fact Finder then allowed for Rebuttal Briefs to be postmarked by January 31, 2011 and he received one from the Union by that date.

The parties were given full opportunity to support their arguments with evidence, and to fully challenge and support their arguments and rebuttals. After a complete and thorough review of Hearing Briefs, Exhibits and Rebuttal Brief and independent research, the Fact Finder makes these Findings and Recommendations to resolve this impasse.

### **OPEN ITEMS**

In setting up the Fact-Finding Hearing, The Fact Finder ascertained that the open items would be: Wages, Upgrade for Clerk to the Justice and Duration of Agreement.

In the Employer's Hearing Brief, however, they added the following issues: Job Qualifications, Layoff Procedure, Overtime/Compensatory Time, Hours of Work, Health Insurance, Loss of CDL.

### **ISSUE #1 - WAGES**

#### **UNION POSITION**

They propose 3 year wage increases of 3% in each of three (3) years retroactive to January 1, 2010.

The Union points out that their position is to accept the Employer's proposal made at a mediation session on July 8, 2010 of a 3% increase in each of three years. The Employer granted a 3% wage increase in January 2010 to non-union Town employees, except for two (2) Department Heads who received a 2% increase. The Union provided data that showed that the

3% increase is also the prevalent wage increase in Chautauqua County. State public employees received 3% as did County, Town of Ellicott, Village of Fredonia and Village of Silver Creek employees. They say even with this increase, Unit members would remain proportionally behind employees in the same titles in other comparative municipalities. The Union shows that the Annual Financial Reports filed with the State by the Employer for fiscal/calendar years 2006, 2007, 2008 reflects a

*“substantial balance of unreserved, unappropriated funds in its primary operating accounts (Town-wide and Part-Town General Funds) as well as in the Highway Department operating accounts (Town-wide and Part-Town Highway Funds) at the close of the 2008 calendar year. At that time the Town had \$711,257 in unreserved, unappropriated funds available in its two (2) operating accounts and the Highway Department had \$484,388 in its two (2) unreserved, unappropriated operating accounts.”*

(Hearing Brief)

For fiscal/calendar 2010, funds in these accounts have increased by 3.9% and 5.4% respectively. They cite the Government Finance Officers Association recommendation that municipalities maintain between 5%-15% of their operating revenues in unreserved, unappropriated funds, and note *“the Employer had more than 100% of a year’s operating expenses on hand in these funds”* (*Id.*). They conclude the Employer has the clear ability to fund the Union’s position on wage increases.

## **EMPLOYER POSITION**

Their last proposal on July 8, 2010 in mediation was for a 3% increase in each of 3 years. In their Hearing Brief, they now say that there should be a 0% wage increase for 2010 since "*that year is over with*" and 2011 is upon us. The Employer cites the fact that "*the Town Board decided not to raise taxes in 2010; the Highway Department must stay within its allocated budget; the Town has a population of 5,502 of which 1,050 were prisoners at the Correctional facility with 1,873 citizens between ages 16 and 44 to work and pay taxes; median household income was \$30,909 and per capita income was \$12,881; median rent in the Town is \$355 and homeowner mortgage costs were \$785 monthly; Town has 2,096 housing units with 1,293 owner occupied; median market value was \$55,300; 429 residential units of which 230 are mobile homes; there are 622 taxable parcels in the township; total assessed valuation is \$37,053,412 with \$10,269,200 except from taxes; Town tax rate was \$5.7000553/\$1000*" (Hearing Brief).

## **DISCUSSION**

The Employer's offer in July 2010 of 3% in each of three (3) years was a reasonable offer given that most other Town employees received that amount. There is no good reason to deny an important part of the Town's work force from an identical wage increase. The estimated wage increase cost is \$7,106 for 2010, \$7,319 and \$7539 in the latter two (2) years. The proposed increase is also favorably measured against the Employer's ability to pay as reflected by the documents filed with the Office of State Comptroller for the year 2008 and as recent as a "snapshot" taken on 10/21/10 showing very good stewardship on the part of the Town Board. Their unreserved, unappropriated fund balances are positive and hefty. The Union suggests that

the Town's general operating funds' unreserved, unappropriated fund balance increased to \$738,821 and the Highway Department similar fund increased to \$510,747 for fiscal 2010. The wage offer compares favorably with the motor equipment operator settlements reached in the State, Chautauqua County, Town of Ellicott, and the Villages of Silver Creek and Fredonia. Wage comparability data supplied by the Union (Exhibit F) shows their members would still trail same job title wages in neighboring municipalities even after the recommended wage increases.

Retroactivity is granted to the beginning of the successor contract year because Union members should not be penalized for the lack of a timely successor agreement. For them to be penalized is to assess full "blame" for the lack of successful negotiations on them when in fact the opposite may be true. Furthermore, retroactivity is almost universally accepted as the norm in contract negotiations for this reason.

### **RECOMMENDATION**

**THE FACT FINDER'S RECOMMENDATION IS FOR A 3% WAGE INCREASE REFLECTED IN ARTICLE 7 OF THE CBA IN EACH OF 3 YEARS , AND RETROACTIVE TO JANUARY 1, 2010.**

**RETROACTIVITY PAY SHOULD BE PAID WITHIN THIRTY (30) DAYS OF THE ACCEPTANCE OF THIS REPORT.**

**NEW HIRE RATE AT 75% OF FIXED RATE IN YEAR 1 UNTIL COMPLETION OF PROBATION, THEN 90% OF JOB RATE, THEN 100% OF JOB RATE EFFECTIVE JANUARY 1, 2011.**



## **ISSUE #2 – SALARY UPGRADE FOR CLERK TO THE JUSTICE**

### **UNION POSITION**

The Union seeks a fifty cents (\$.50) per hour increase in the first two (2) years of the successor agreement for this position. They believe the increase is warranted by three (3) factors based on: the local share of revenue generated by the Town Court; the level of responsibility for the day-to-day administration of the Town Court; and the comparative wage rates of similar positions in surrounding courts. This job title is fully funded by the revenue generated by the Town. This Town Court has been in the top four (4) municipal courts in the county in generating income, and approximately one-third (1/3) remains in the Town as Local Share. They believe the historical record demonstrates the proven record of generating Local Share revenue. For fiscal 2009, the Town Court generated \$109,979 in income and after salaries the net Local Share revenue to the Town was \$63,084. Exhibit F in the Union's Hearing Brief shows the inadequacy of this position's wage rate: Town \$13.99/hour, Town of Ellicott \$20.81 (2010), Village of Fredonia \$18.76, Village of Silver Creek \$16.00. The Union Brief is replete with examples of this jobholder's expertise in obtaining grants for various office equipment, office furniture and the like for the Court's use.

### **EMPLOYER POSITION**

They believe that *“any revenue above costs should go to help the taxpayers and not to court personnel. The rule in New York has always been that judges and staff compensation is not*

*to be determined by the amount of revenue taken in by the court as that would led to unfair treatment of the defendants as the judges would tend to impose fines based upon how much they or their staff want to be paid not on the gravity of the offense” (Hearing Brief).*

## **DISCUSSION**

The Employer has an excellent argument that judicial and staff compensation should not be tied to revenue taken in by the Courts. However, I suspect the Union’s goal was more to highlight the employee’s dedication and performance. Even so, more compelling is the comparative wage study in Exhibit F of the Union Hearing Brief showing a median hourly deficit of \$4.76. The cost of the Union’s proposal is approximately \$910 per year, well within the Town’s ability to pay.

## **RECOMMENDATION**

**THE FACT FINDER’S RECOMMENDATION FOR THE CLERK TO JUSTICE POSITION IS FOR A \$.25/HOUR INCREASE EFFECTIVE JANUARY 1, 2010, AND \$.50/HOUR INCREASE EFFECTIVE JANUARY 1, 2011 AND JANUARY 1, 2012.**

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## **ISSUE #3 – JOB SECURITY**

### **UNION POSITION**

They allege “*the Town threatened layoffs if CSEA employees bargained for and received any wage increases*” (Hearing Brief). They propose, “*During the term of this contract, the parties*

*agree that there will be no layoff of current employees. The Town reserves the right to determine whether or not a vacancy created by a voluntary separation from service of a current employee is to be filled or left vacant.”*

## **EMPLOYER POSITION**

As far as can be determined from their Hearing Brief, they prefer to insert a new Layoff Procedure in the successor agreement.

- a. *“The Department Head in his sole discretion shall determine when and if any layoffs shall be required.*
- b. *The order in which an employee or employees are to be laid off or recalled shall be determined pursuant to this section.*
- c. *The Department Head shall give the employee notice of the layoff the last day of the employees’ workweek.*
- d. *Laid off employees temporarily called back to work part time shall be paid at the same rate as when regularly employed and given pro-rata the non monetary benefits they would have received if returned to work full time.”*

## **DISCUSSION**

This is one of those unfortunate areas where communications between the parties needs to be reaffirmed for the long-term benefit of the citizens of the Town and these employees. People need to be careful what they say especially in heat of collective bargaining as experience has shown all of us that words can impede progress. In reviewing the present Article 5,

Seniority/Layoff/Recall, the Fact Finder believes the Town does not need further refinement as it proposes. Neither can the Union seek the verbiage it seeks. Remedy for any abuse is available to either party.

## **RECOMMENDATION**

**THE FACT FINDER RECOMMENDS NO CHANGE IN ARTICLE 5  
OF THE CBA.**

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## **ISSUE #4 – HEALTH INSURANCE**

### **EMPLOYER POSITION**

They want Union members to contribute 50% of health insurance costs, and to the most cost effective plan provided by the Town. They wish to delete the requirement that the Union must approve any change in health insurance plans and add a provision so that any employee recalled from layoff temporarily and entitled to health insurance is to receive the quarterly payment prorated based on the number of days they work in each quarter of eligibility.

### **UNION POSITION**

The current plan is a BC/BS Community Blue 202 Plus Plan. They allege the Town proposed a change to an Independent Health FlexFit plan with carries a lower premium, but higher

co-pays and deductibles to members. This new plan shifts more out-of-pocket expenses to members. The Union, however, counter proposed that the Town fund a Health Reimbursement Account with one thousand (\$1,000) dollars annually for each enrolled member to help offset higher co-pays and deductibles. The Town balked and returned to the present BC/BS plan position. At the last mediation session, the Town proposed Union members pay 5%, 7% and 9% of the premium cost in each of three (3) years. The Union is willing to contribute towards health insurance but in a flat dollar amount so as to not offset the modest wage gain.

### **DISCUSSION**

It is reasonable for the Union to have some say in any health insurance change contemplated by the Employer. Cost is but one (1) important factor in the health insurance discussion. On the matter of cost sharing of the premiums, times have indeed changed and now contributory plan can be found in comparative municipal data. It should be no exception here, except for the amount and method of contribution.

### **RECOMMENDATION**

**THE FACT FINDER'S RECOMMENDATION IS FOR UNION MEMBERS WHO ENROLL IN HEALTH INSURANCE TO CONTRIBUTE 4% OF THE PREMIUM EFFECTIVE THE FIRST OF THE MONTH AFTER A SUCCESSOR AGREEMENT HAS BEEN SIGNED IN 2011, AND CONTRIBUTE 6% EFFECTIVE JANUARY 1, 2012.**

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## **ISSUE #5 – DURATION OF AGREEMENT**

### **UNION POSITION**

They propose a three (3) year successor agreement effective January 1, 2010.

### **EMPLOYER POSITION**

It is not entirely clear to the Fact Finder, but it is believed that their position is a one (1) year agreement (page 5 of Hearing Brief).

### **DISCUSSION**

The Fact Finder believes the parties dearly need to spend some time away from the negotiating table to give their fledging employer-union relationship time to settle in. Any alleged discussion that the year 2010 is over with and therefore can be summarily dismissed is itself dismissive herein as being naïve in employer-employee relationships.

### **RECOMMENDATION**

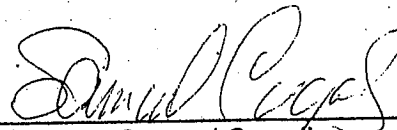
**THE FACT FINDER RECOMMENDS A THREE (3) YEAR SUCCESSOR AGREEMENT EFFECTIVE JANUARY 1, 2010 AND ENDING DECEMBER 31, 2012.**

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These are the most important issues separating the parties and all other issues are considered null and void for these negotiations.

Neither this Fact Finder nor this Fact Finding Report is interested in the meaningless exercise of proving who was right or wrong. It does attempt to show what is necessary to provide equity on stubborn issues whose time for resolution has certainly come. I look forward to hearing that both parties demonstrated leadership by accepting these Recommendations in an expeditious manner.

March 11, 2011  
Orchard Park, New York



Samuel Cugali  
FACT FINDER

Cc: Richard A. Curreri, Director of Conciliation, PERB